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CLERK

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

JGK 05/01/2017

U.S. DISTRICT COURT

EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

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4 UNITED STATES OF AMERICA, : 16-CR-00355 (ARL)
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6 : October 31, 2016
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v. Defendant. :
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10 TRANSCRIPT OF CIVIL CAUSE FOR ENTERING GUILTY PLEA
11 BEFORE THE HONORABLE ARLENE R. LINDSAY
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiff: SETH DAVID DuCHARME, ESQ.
15 United States Attorney's Office
16 Eastern District of New York
610 Federal Plaza
Central Islip, New York 11722

17 For the Defendant: RANDI CHAVIS, ESQ.
18 Federal Defenders of New York
70 Federal Plaza
Central Islip, New York 11722

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21 Court Transcriber: SHARI RIEMER, CET-805
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Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 (Proceedings began at 2:32 p.m.)

2 THE CLERK: Calling CR 16-335, United States of
3 America v. Karen Hunter.

4 Would you state your appearances?

5 MR. DuCHARME: For the United States Seth DuCharme.

6 Good afternoon, Your Honor. And I'll --

7 THE COURT: Good afternoon.

8 MR. DuCHARME: -- I'll also add for the record,
9 Your Honor, that victim notification has been made in this
10 case and that the victim is present in the courtroom.

11 THE COURT: All right.

12 MS. CHAVIS: Did you [inaudible]?

13 MALE VOICE: Sure. Mr. Randall would like to know
14 [inaudible].

15 MR. RANDALL: Good afternoon.

16 THE COURT: Yes, Good afternoon.

17 MR. RANDALL: Charles Randall.

18 MS. CHAVIS: Thank you, Your Honor. Randi Chavis,
19 Federal Defenders, on behalf of Ms. Hunter.

20 THE COURT: All right. Am I to understand, Ms.
21 Chavis, that Ms. Hunter is prepared to enter a plea of guilty
22 to an Information?

23 MS. CHAVIS: Yes, Your Honor, that is correct.

24 THE COURT: All right. So let's swear in Ms.
25 Hunter.

1 THE CLERK: Please rise and raise your right hand.

2 (The oath was administered.)

3 THE COURT: All right, Ms. Hunter, be seated. I'm
4 going to go through a series of questions with you. You were
5 provided a form -- well, before I go to that let me just
6 review with you what your rights are with respect to who can
7 take the plea.

8 This matter is assigned to Judge Hurley, he's the
9 District Judge and eventually will be the judge who sentences
10 you on this Information. But you have a right to have him
11 take your plea, although I understand you've signed the
12 consent form to let me take the plea. Is that correct?

13 THE DEFENDANT: That is correct.

14 THE COURT: All right. Now, you still go forward
15 with that consent even though you're aware that you can insist
16 on Judge Hurley taking your plea?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. So I'm going to review with
19 you the allocution. That's that form that you filled out with
20 the assistance I assume of your attorney. Do you know what
21 I'm talking about?

22 THE DEFENDANT: I do.

23 THE COURT: And it's the form that asked you a
24 series of questions. I'm going to review that with you on the
25 record. And now that you've been sworn in your answers are

1 subject to the penalties of perjury. Do you understand?

2 THE DEFENDANT: I do.

3 THE COURT: Okay. So I'm advised that you are here
4 because you want to enter a plea to an Information charging
5 you with a misdemeanor count under Title 18 Section
6 1030(a)(2)(c) and 1030(c)(2)(A), which charges you accordingly
7 that in or about February 2012 within the Eastern District of
8 New York that you did knowingly and intentionally access a
9 computer without authorization and obtain information from a
10 protected computer.

11 Now, that's the charge to which I understand you
12 wish to plead guilty; is that right?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. So let's go through the
15 allocution then. All right. Just for the record can you tell
16 me how old you are, please?

17 THE DEFENDANT: I am 62 years old.

18 THE COURT: All right. And I understand you're a
19 citizen, is that right, of the United States?

20 THE DEFENDANT: I am.

21 THE COURT: All right. So how far did you get in
22 school?

23 THE DEFENDANT: Graduate degree, Master's.

24 THE COURT: And you have specifically an MBA?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Now at the time are you
2 under the care of any kind of a doctor or psychiatrist,
3 anything like that?

4 THE DEFENDANT: No, I am not.

5 THE COURT: And in the last 24 hours have you taken
6 any narcotic drugs, medicines, pills, and had anything to
7 drink?

8 THE DEFENDANT: No, I have not.

9 THE COURT: Okay. You understand the reason I ask
10 that is to make sure your mind is clear. Is your mind clear
11 today?

12 THE DEFENDANT: Yes, it is.

13 THE COURT: Okay. Have you ever been hospitalized
14 or treated for narcotics addiction?

15 THE DEFENDANT: No, I have not.

16 THE COURT: And you do understand what's going on
17 here today?

18 THE DEFENDANT: I do.

19 THE COURT: So, Ms. Chavis, have you discussed this
20 matter with your client, Ms. Hunter?

21 MS. CHAVIS: I have, Your Honor.

22 THE COURT: And are you satisfied that Ms. Hunter
23 understands the rights she'd be waiving by entering a plea of
24 guilty?

25 MS. CHAVIS: I am.

1 THE COURT: Do you have any doubt as to her
2 competency to proceed?

3 MS. CHAVIS: No.

4 THE COURT: All right. Ms. Hunter, you have a
5 right, a continuing right to plead not guilty. Do you
6 understand that?

7 THE DEFENDANT: I do.

8 THE COURT: And if you were to continue in your plea
9 of not guilty under the Constitution and laws of the United
10 States you would be entitled to a speedy and a public trial by
11 a jury with the assistance of an attorney at every stage of
12 the proceedings. Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: And if you couldn't afford an attorney,
15 as you know one has been appointed for you but the Court would
16 continue to absorb the cost of your counsel. Do you
17 understand that?

18 THE DEFENDANT: I do.

19 THE COURT: And that would be true until the case is
20 completed. Do you understand?

21 THE DEFENDANT: I do.

22 THE COURT: At a trial if you decided to go forward
23 with a plea of not guilty there would be a trial and you would
24 be presumed to be innocent. And it would be up to the
25 Government to overcome that presumption and establish your

1 guilt by competent evidence, and standard proof would be
2 beyond a reasonable doubt.

3 You don't have to prove your innocence. That's why
4 you have a presumption of innocence and that's why you have no
5 burden at all to prove anything. And if the Government failed
6 to meet its burden of proof the jury would have no recourse
7 but to find you not guilty. Do you understand that?

8 THE DEFENDANT: I do.

9 THE COURT: You're looking at me in a funny way.
10 Did I say something confusing to you?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Okay. You understood that then.

13 THE DEFENDANT: I did.

14 THE COURT: All right. In the course of the trial,
15 if there were a trial, the witnesses for the Government would
16 have to come to court and they would be required to testify in
17 your presence. Your attorney, Ms. Chavis, would have the
18 right to cross-examine the Government's witnesses, she would
19 have the right to object to evidence that the Government might
20 want to offer against you, and if you wanted to offer evidence
21 or compel witnesses to appear on your behalf you could do that
22 as well. Do you understand that?

23 THE DEFENDANT: I do.

24 THE COURT: If there were a trial you would have the
25 right to testify if you wanted to, but you would be under no

1 obligation to testify, because under the Constitution you
2 would have a Fifth Amendment privilege not to incriminate
3 yourself so you cannot be forced to testify. And if you
4 decided you did not want to testify the Court would instruct
5 the jury that that's your Fifth Amendment right and that they
6 could not hold that decision against you. Do you understand
7 that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: However, if you plead guilty and the
10 Court accepts this plea you would be giving up your
11 constitutional right to a trial and the other rights I've
12 described to you. There'd be no further trial of any kind,
13 there'd be no right to appeal or attack the question of
14 whether or not you were guilty. A judgment of guilty would be
15 entered on the basis of your plea, and that judgment could not
16 be withdrawn or attacked or undone in any way. Do you
17 understand that?

18 THE DEFENDANT: I do.

19 THE COURT: If you plead guilty I'm going to be
20 asking you questions about what you did in order to satisfy
21 myself that you are in fact guilty of the crime that you are
22 pleading guilty to. And you'll have to answer those questions
23 and acknowledge your guilt, and in doing so you're clearly
24 giving up your Fifth Amendment right not to incriminate
25 yourself. Do you understand?

1 THE DEFENDANT: I do.

2 THE COURT: So are you willing to give up your right
3 to a trial and these other rights I've described to you?

4 THE DEFENDANT: I am.

5 THE COURT: In addition, I might point out to you
6 that if you give -- certainly if you enter a plea of guilty
7 you would be giving up your right to the presumption of
8 innocence. Do you understand that? The guilty plea would
9 overcome that. Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: I understand there's an agreement with
12 the Government, a plea agreement. Maybe, Mr. DuCharme, if you
13 could just describe it briefly on the record, please.

14 MR. DuCHARME: Yes, Your Honor. The plea agreement
15 contemplates a plea to the one-count Information that
16 Your Honor referenced to a misdemeanor charge of unauthorized
17 access of a protected computer. It provides for a recitation
18 of the maximum and minimum penalties. Would you like me to
19 walk through the provisions, Your Honor, and [indiscernible]?

20 THE COURT: No, I'll review the penalty provisions.
21 Essentially that's the agreement then?

22 MR. DuCHARME: That's correct, Your Honor.

23 THE COURT: All right. Ms. Chavis, are those the
24 material aspects of the agreement?

25 MS. CHAVIS: Yes, Your Honor.

1 THE COURT: Okay. All right. One of the things
2 I'll review with you, which the Government offered to do but I
3 prefer to do, is the penalties that are associated with this
4 count that you're pleading guilty to. The count that you
5 charged with violating and which you've agreed to plead guilty
6 to carry the following punishment, carries the following
7 punishment.

8 It's up to a maximum term of imprisonment of one
9 year. There is a minimum term of zero. There's a maximum
10 supervised release term which would be one year to follow any
11 term of imprisonment. There's a maximum fine of \$100,000.
12 There doesn't seem to be any restitution in this case.
13 There's a mandatory \$25 special assessment.

14 So do you understand that those are the maximum and
15 minimum penalties that can be imposed in connection with this
16 plea -- count you're pleading guilty to?

17 THE DEFENDANT: I do.

18 THE COURT: All right. Now, the Government in its
19 plea agreement went over some of its estimates with respect to
20 the sentencing guidelines. Did you discuss the sentencing
21 guidelines with your attorney, Ms. Chavis?

22 THE DEFENDANT: I did.

23 THE COURT: Okay. And so the Government's estimate
24 is that, given that you're entering a plea, they believe that
25 your sentencing guidelines range would be a six, which would

1 carry a range of imprisonment of zero to six months. Is that
2 what you understood from this agreement?

3 THE DEFENDANT: I did.

4 THE COURT: Okay. I'm not going to read the whole
5 agreement to you, you've read it; correct --

6 THE DEFENDANT: I did.

7 THE COURT: -- before you signed it?

8 THE DEFENDANT: I did.

9 THE COURT: You reviewed it with Ms. Chavis?

10 THE DEFENDANT: I did.

11 THE COURT: Okay. So I'm just going to highlight
12 this part. The Government does this estimate just to give you
13 its view of the case, but I think it's important to point out
14 to you that it will be Judge Hurley who ultimately decides
15 what is the correct guideline range in your case. Do you
16 understand?

17 THE DEFENDANT: I do.

18 THE COURT: What will happen is you'll go to
19 Probation and Probation will prepare a report for Judge
20 Hurley's review which will detail your background, your
21 education, your -- the nature of this crime, and all the
22 pertinent details that factor into what might be an
23 appropriate sentencing guideline range in your case.

24 Now, it could be the same as what the Government
25 estimates and it could be different, and it will be up to

1 Judge Hurley to decide what that range is. And if Judge
2 Hurley decides that, based on what he's read and viewed in
3 connection with the submission to him, that there's any need
4 for going above the guidelines or below the guidelines, he has
5 the discretion to do that. Do you understand?

6 THE DEFENDANT: I do.

7 THE COURT: Okay. The bottom line is there's no
8 certainty that you will be sentenced within the range that the
9 Government estimates. Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: So I guess what I'm leading up to is
12 that if the sentence turns out to be harsher than you
13 anticipated because of the Government's estimate here, you do
14 not, cannot use that as a basis to withdraw your plea. Are
15 you clear on that?

16 THE DEFENDANT: I am.

17 THE COURT: Now, I told you that the Government has
18 to prove your guilt beyond a reasonable doubt, and in this
19 case what they would have to prove is that within the Eastern
20 District of New York in or about February 2012 that you
21 intentionally accessed what we call a protected computer, that
22 is a computer that was connected to the interstate commerce
23 and used in interstate commerce, and you did that in order --
24 without authorization and in order to obtain information from
25 the computer. Do you understand that? That's what they would

1 have to prove beyond a reasonable doubt.

2 THE DEFENDANT: Can I ask her a question?

3 (Pause)

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. Now, do you have any questions
6 that you need to ask the Court? I mean you can review them
7 first with your attorney, but if there's something else that
8 you need to inquire about you should think about that right
9 now. Is there anything else?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Okay. Are you willing to go forward
12 with your plea of guilty?

13 THE DEFENDANT: I am.

14 THE COURT: I want to bring, point your attention to
15 Item 38 on the plea agreement.

16 Ms. Chavis, could you just bring up that page? It's
17 page 13 of the plea agreement? Not the plea agreement, the
18 allocution form.

19 MS. CHAVIS: I don't -- you have my copy,
20 Your Honor.

21 THE COURT: Oh, I do? All right. So let's get it
22 over to you.

23 Do you have one there, Bob?

24 I just want to ensure that you reviewed those
25 factors with Ms. Hunter.

1 MS. CHAVIS: I did, Your Honor.

2 THE COURT: Okay. You see that list there, Ms.
3 Hunter?

4 Oh, did you show it to her? Oh, give her the
5 allocution form.

6 MS. CHAVIS: Your Honor, [inaudible].

7 THE COURT: Okay. All right. Then let me ask you,
8 Ms. Chavis, are you aware of any legal reason why the
9 defendant should not be permitted to go forward with her plea
10 of guilty?

11 MS. CHAVIS: No, Your Honor.

12 THE COURT: All right. Ms. Hunter, are you
13 satisfied with your lawyer up to this point?

14 THE DEFENDANT: I am.

15 THE COURT: And I take it you're being shown the
16 factors, is that right, right now?

17 THE DEFENDANT: I'm sorry, ma'am?

18 THE COURT: Did your attorney just show you that
19 list of factors that I was referring to earlier?

20 THE DEFENDANT: Yes.

21 MS. CHAVIS: But just to remind Ms. Hunter,
22 Your Honor, that we previously discussed them.

23 THE COURT: Okay. Ms. Hunter, do you believe your
24 lawyer is doing a good job for you?

25 THE DEFENDANT: I do.

1 THE COURT: All right. So with respect to the
2 Information charging you with unauthorized access of a
3 computer, how do you plead?

4 THE DEFENDANT: I plead guilty.

5 THE COURT: Are you entering that plea of guilty
6 voluntarily and of your own free will?

7 THE DEFENDANT: I am.

8 THE COURT: Has anyone threatened or forced you to
9 plead guilty?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: On the agreement with the Government,
12 which we have described on the record, has anyone made any
13 promises to you that caused you to plead guilty?

14 THE DEFENDANT: No.

15 THE COURT: Has anyone promised you what your
16 sentence will be?

17 THE DEFENDANT: No.

18 THE COURT: All right. Did you then, as described
19 in the Information, on or about February 2012 within the
20 Eastern District of New York and elsewhere, did you knowingly
21 and intentionally access a computer without authorization and
22 obtain information from that protected computer? Did you do
23 that?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. So tell me in your own words

1 what you did.

2 THE DEFENDANT: In February of 2012 in Suffolk
3 County, New York, I accessed a computer by reading emails in
4 another person's email account. I knew I did not have
5 permission or authorization to access the emails when I
6 reviewed them.

7 THE COURT: And did you understand that this was a
8 computer that was connected to the internet?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Let me hear from the
11 Government on the proof in this case.

12 MR. DuCHARME: Yes, Your Honor. If called to trial
13 the Government would prove that in or about February 2012 she
14 obtained credentials that allowed her to access another
15 person's Yahoo email account. That account was posted on
16 Yahoo servers but contained the personal information of the
17 victim. And so through these credentials she was able to
18 access that other person's private email and that she did not
19 have permission or authorization to access that information at
20 the time that she did it.

21 In addition, the Government would prove that Yahoo
22 servers and the email facilities that the defendant intruded
23 upon affected interstate commerce in that they facilitated
24 essentially communications outside the state of New York.

25 THE COURT: What was the relationship between the

1 defendant and the person whose account was intruded upon?

2 MR. DuCHARME: Well, at the very least, Your Honor,
3 it was a relationship where they had differing business
4 objectives, to put it bluntly I think, different visions as to
5 how a certain number of transactions or strategies that
6 spilled into each other's interests might proceed. And so --

7 THE COURT: And how did the Government uncover this?

8 How did you come to become aware of the intrusion?

9 MR. DuCHARME: Well, there were a number of
10 different sources, Your Honor, including witness interviews
11 and the examination of records that were obtained pursuant to
12 subpoena and process in connection with the investigation.

13 THE COURT: And you were able to trace it back to
14 the defendant's computer, is that how that went? Or did she
15 go directly to --

16 MR. DuCHARME: It was not her computer, Your Honor,
17 it was -- essentially she obtained access through a portal
18 initially so she could get credentials basically --

19 THE COURT: Okay.

20 MR. DuCHARME: -- that allowed her to see --

21 THE COURT: To pose as the individual whose account
22 it was?

23 MR. DuCHARME: Well, essentially, Your Honor, to
24 sign as the other person in the victim's email account --

25 THE COURT: Okay.

1 MR. DuCHARME: -- using the credentials and to view
2 through that portal what you would normally see or what the
3 victim would see if they log into their own email account.

4 THE COURT: Okay. All right then. Based upon the
5 information I've been given, I find that the defendant is
6 acting voluntarily, that you understand your rights and the
7 consequences of this plea. I find that there's a factual
8 basis for it, and I accept the plea of guilty to the
9 Information and I will recommend that Judge Hurley do the
10 same.

11 I understand that there's no bail application since
12 there's no bond being requested, or is there?

13 MR. DuCHARME: That's correct, Your Honor. The
14 Government concedes to the defendant's release on her own
15 recognizance and is not aware of information that would
16 support a danger to the community or a substantial risk of
17 flight.

18 THE COURT: All right. I take it there's no
19 objection to that, Ms. Chavis?

20 MS. CHAVIS: That's correct, Your Honor.

21 THE COURT: All right. So let's her have sign the
22 bond.

23 (Pause)

24 THE COURT: All right, Ms. Hunter, you're going to
25 be released today, but that doesn't mean you have no further

1 obligation to the Court. There'll be a sentencing date that's
2 going to be set by Judge Hurley. I don't have one for you
3 today. He's requested that you go to Probation and they'll
4 notify you when the sentencing date is set. Your attorney,
5 Ms. Chavis, will be there at the time of sentencing as your
6 attorney in that regard.

7 So just understand that if you fail to appear on the
8 date that's set for sentencing you could risk being faced with
9 another charge of bail jumping, which is a separate charge
10 than the one you just pled guilty to. Do you understand that?

11 THE DEFENDANT: I do.

12 THE COURT: Okay. Is there anything else I have to
13 address today?

14 MR. DuCHARME: Nothing from the Government,
15 Your Honor. Thank you.

16 THE COURT: Ms. Chavis?

17 MS. CHAVIS: No, Your Honor. Thank you.

18 THE COURT: All right. Thank you.

19 (Proceedings ended at 2:52 p.m.)

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1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.



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6 Shari Riemer, CET-805
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Dated: May 1, 2017